

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ERIC J. BACZENSKI and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, Warwick, RI

*Docket No. 00-2224; Submitted on the Record;  
Issued July 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a back injury in the performance of duty on February 24, 1999, causally related to factors of his federal employment.

On August 5, 1999 appellant, then a 39-year-old air traffic control specialist, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, alleging that he strained his lower back on February 24, 1999 when he slipped and fell on ice in the parking lot of the employing establishment. He did not stop work.

By letter dated August 31, 1999, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant stating that the initial information submitted was insufficient to establish an injury on the above date. The Office provided appellant with 30 days within which to submit information.

In response to the Office's request, appellant submitted a narrative statement dated September 26, 1999. He indicated that he delayed filing his claim and seeking treatment because he believed his back pain would go away in time. Appellant noted that after four months his back pain persisted and he sought medical treatment.

On October 4, 1999 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.<sup>1</sup> The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

On January 25, 2000 appellant requested a review of the written record.<sup>2</sup> He submitted an attending physician's report dated July 22, 1999 prepared by a physician's assistant; a medical report dated August 24, 1999 prepared by Dr. Mark A. Palumbo, a Board-certified orthopedic surgeon; an attending physician's report prepared by Dr. Palumbo dated October 1, 1999; and a progress note prepared by Dr. Palumbo dated October 1, 1999. The attending physician's report dated July 22, 1999 indicated that appellant was injured on February 29, 1999 when he slipped on ice when leaving the employing establishment. The report diagnosed appellant with mechanical back pain and spondylolisthesis at L5-S1. The report indicated with a checkmark "yes," that appellant's condition was caused or aggravated by an employment activity. The medical report dated August 24, 1999 prepared by Dr. Palumbo noted a history of appellant's injury occurring on February 29, 1999 when appellant slipped on ice when leaving work. He noted appellant reported a prior history of back discomfort due to spondylolisthesis, which occurred when appellant was 12 years of age. Dr. Palumbo indicated that appellant experienced persistent back pain since February 25, 1999. He noted appellant's physical examination was essentially normal. Dr. Palumbo noted that diagnostic studies of the lumbar spine were performed which revealed a Grade 2 isthmic L5-S1 spondylolisthesis. A magnetic resonance imaging (MRI) scan dated August 2, 1999 revealed an L5-S1 spondylolisthesis with a marked foraminal stenosis at the L5-S1 segment. Dr. Palumbo indicated a diagnosis of mechanical low back pain. He noted that it is more probable than not that the current symptomatology is causally related to the work injury in February 1999. He indicated that appellant could resume his usual occupation without restrictions. The attending physician's report prepared by Dr. Palumbo dated October 1, 1999 indicated a diagnosis of Grade 2 spondylolisthesis L5-S1. He noted with a checkmark "yes" that the condition was caused or aggravated by an employment activity. Dr. Palumbo indicated that appellant could continue to work without restrictions. The progress note prepared by Dr. Palumbo dated October 1, 1999 indicated that appellant still experienced low back pain. He noted appellant's physical examination was essentially normal. Dr. Palumbo recommended physical therapy for appellant's back condition.

On April 21, 2000 the hearing representative affirmed the decision of the Office dated October 4, 1999 on the basis that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every

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<sup>2</sup> In a letter dated October 27, 1999, appellant requested an oral hearing before an Office hearing representative. He subsequently withdrew this request and requested a review of the written record.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.<sup>5</sup> In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>6</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>7</sup> A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.<sup>8</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>9</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

In this case, it is not disputed that appellant slipped on ice in the employing establishment parking lot. However, the medical evidence is insufficient to establish that this activity caused or

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>8</sup> *Id.* at 255-56.

<sup>9</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>10</sup> *James Mack*, 43 ECAB 321 (1991).

aggravated a medical condition. In a letter dated August 31, 1999, the Office advised appellant of the type of factual and medical evidence needed to establish his claim. Appellant submitted an attending physician's report dated July 22, 1999, prepared by a physician's assistant, which indicated that appellant was injured on February 29, 1999 when he slipped on ice while leaving the employing establishment. However, such reports are not considered medical evidence as a physician's assistant is not considered a physician under the Act.<sup>11</sup>

Appellant also submitted a medical report dated August 24, 1999 prepared by Dr. Palumbo, which noted a history of appellant's injury occurring on February 29, 1999 with "persistent back pain since February 25, 1999." Dr. Palumbo's report did not note an accurate history of the injury or the employment factors believed to have caused or contributed to the appellant's back condition.<sup>12</sup> Additionally, Dr. Palumbo only offered speculative support for causal relationship by opining that "it is more probable than not that the current symptomatology is causally related to the work injury in February 1999." The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>13</sup> Finally, Dr. Palumbo's report did not include a rationalized opinion regarding the causal relationship between appellant's back condition and the factors of employment believed to have caused or contributed to such condition.<sup>14</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

The only other report supporting causal relationship is the attending physician's report prepared by Dr. Palumbo dated October 1, 1999 which indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>15</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

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<sup>11</sup> See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary); see also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

<sup>12</sup> See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

<sup>13</sup> Speculative and equivocal medical opinions regarding causal relationship have no probative value; see *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

<sup>14</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

<sup>15</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

The remainder of the medical evidence fails to note the employment incident and fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>16</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated April 21, 2000 is hereby affirmed.

Dated, Washington, DC  
July 27, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>16</sup> See *Victor J. Woodhams, supra* note 4.